

EXHIBIT NO. 9
DATE 2-6-09
BILL NO. SB 122

Comparison between Present Mortgage Broker Law and Senate Bill 122

- 1. Brick and Mortar Requirement**
- 2. Call Report under Mortgage**
- 3. Continuing Education**
- 4. Criminal Background Check**
- 5. Enforcement Authority**
- 6. Examination/Investigation Authority**
- 7. Examination Fees**
- 8. Exemptions**
- 9. Experience Requirements**
- 10. Licensing Fees**
- 11. License Types**
- 12. Licensing Expiration Dates**
- 13. Record Keeping Requirements**
- 14. Rule Making Authority**
- 15. Submission of Application**
- 16. Surety Bond**
- 17. Testing**
- 18. Trust Account**

1. Brick and Mortar Requirement under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
In-state office with designated manager required, 32-9-121 and 32-9-122, MCA	SB 122 does not require a physical office in Montana.	The Banking Division has had concerns that a brick and mortar requirement under present law is not constitutional.

2. Call Report under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Not required under present law.	SB 122 requires mortgage brokers to submit a mortgage call report that reports its financial condition, New Section 27.	Federal law set forth within the SAFE Act requires the submission of mortgage call reports.

3. Continuing Education under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
12 hours annually, 32-9-118, MCA. Courses are approved by the Banking Division.	8 hours annually, New Section 24. Courses to be approved by the NMLS.	The minimum set forth by the SAFE Act is 8 hours annually. SB 122 does not go beyond the federal minimum.

4. Criminal Background Check under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Criminal fingerprint background check through DOJ (state and FBI processed) required for all individual licensees, 32-9-115 and 32-9-116, MCA	Criminal fingerprint background check through NMLS (state and FBI processed) will be required for both individual licensees as well as the principals of the business entities, New Section 17	Under present law the criminal background check is required with the initial license application. The SAFE Act requires that all loan originator applications submitted through the NMLS include another fingerprint card submission for the background check. This will require current individual licensees to be subject to this background check that is required by the SAFE Act.

5. Enforcement Authority under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
<p>The Banking Division has the authority to revoke, suspend, deny, and reinstate licenses, issue cease and desist orders, injunctions, impose civil penalties, order restitution, seek temporary restraining orders, 32-9-126, 32-9-130, 32-9-132, 32-9-133 and 32-9-141, MCA.</p> <p>The Banking Division can refer a matter for criminal prosecution. Practicing without a license is a misdemeanor.</p>	<p>The Banking Division has the authority to deny, suspend, revoke, condition or decline to renew a license; order restitution, impose civil penalties, issue orders and directives, issue cease and desist orders, seek temporary restraining orders, order affirmative action. New Section 41.</p> <p>The Banking Division can refer a matter for criminal prosecution. There is a new crime of mortgage fraud which is a misdemeanor for first offense and a felony thereafter. New Section 43 and 44.</p>	<p>The enforcement authority under SB 122 is similar to what exists under present law.</p>

6. Examination/Investigation Authority under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
<p>The Banking Division has the authority to examine or investigate a mortgage broker at any time, 32-9-130 and 32-9-141 and the authority to investigate an unlicensed individual at any time, 32-9-141, MCA.</p>	<p>The Banking Division has the authority to examine or investigate a mortgage broker or unlicensed individual at any time, New Section 36.</p>	<p>The examination or investigation authority under SB 122 is similar to what exists under present law.</p>

7. Examination Fees under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
<p>\$300 per examiner, per day, 32-9-130, MCA</p>	<p>The examination fees must be commensurate with the actual cost of the examination, New Section 36.</p>	<p>The Banking Division would intend to charge licensees for the actual cost for the examination. Presently the Banking Division is unable to include its travel costs in</p>

		the examination fee. Travel costs include lodging, transportation and per diem. In FY 2008 the mortgage broker program operated at a deficit of \$180,000. The Banking Division is self funded through its licensing, supervisory and examination fees. The Banking Division does not receive any general fund money.
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8. Exemptions under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Exemptions include Montana state chartered bank and credit unions, national bank, federal savings banks and federal credit unions, 32-9-104, MCA. This also includes wholly owned subsidiaries and employees of these financial institutions and their subsidiaries.	Exemptions are similar to present law, but include any bank, savings bank or credit union, New Section 9. Also includes exemptions for those who negotiate mortgage on behalf of immediate family members and those who negotiate the mortgage on the sale of their own residence and attorneys who are acting on behalf of clients and not compensated by a mortgage lender, broker or loan originator.	SB 122 contains the language contained within the CSBS model legislation. This language is required by the SAFE act.

9. Experience Requirements under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Individual mortgage brokers/designated managers require 3 years of experience and loan originator require 6 months of experience, 32-9-109, MCA.	Designated manager require 3 years of experience and mortgage loan originators require 6 months of experience, New Section 10 and 18.	The requirements of SB 122 are identical to what exists under present law.

10. Licensing Fees under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
\$500 for mortgage broker entities, mortgage broker sole proprietors and individual mortgage brokers; \$400 for loan originators, 32-9-117, MCA and ARM 2.59.1704	The licensing fees may be established by the Banking Division through administrative rule making, New Section 8	The Banking Division intends to maintain the licensing fees at the current level set forth under present law.

11. License Types under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Mortgage Broker Business Entity, Mortgage Broker Sole Proprietor, Individual Mortgage Broker and Loan Originator, 32-9-115 and 32-9-116, MCA	Mortgage Broker (Entity), Mortgage Broker Branch and Mortgage Loan Originator, New Section 9	Individual mortgage brokers under present law are classified as mortgage loan originators under SB 122. SB 122 requires the licensing of branch offices. Branch offices are only registered under present law.

12. Licensing Expiration Dates under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Expire annually on June 30th, 32-9-117, MCA	Expire annually on December 31st, New Section 23	The change in the annual expiration date of the licenses is required by the SAFE Act.

13. Record Keeping Requirements under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Must maintain mortgage files and trust account records for a minimum of five years from the date of last activity, 32-9-121, MCA.	Must maintain records for a minimum of five years from the date of last activity, New Section 31. Also includes copies of certain advertisements.	The requirements of SB 122 are similar to what exists under present law.

14. Rule Making Authority under Mortgage Broker Act and SB122

Present Mortgage Broker Law	SB 122	Comment
<p>Present law provides the Banking Division authority to adopt rules pertaining to license revocation or suspension; investigation of applicants, licensees, and unlicensed persons; holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs; prescribing forms for applications; developing or approving tests to be given as a prerequisite for licensure; approval of programs for continuing education; and establishing fees for testing, continuing education programs, and license renewals, equivalent work experience, filing of complaints by members of the public</p>	<p>SB 122 provides the Banking Division authority to adopt rules in the areas of: licensing and regulation of persons covered under SB 122; to implement SB 122 generally; exemption procedure; outlining requirements for licensure; licensing fees to apply for and renew licenses through the National Mortgage Licensing System (NMLS); setting renewal or reporting dates; amending or surrendering a license; other activity necessary for participation in the NMLS; complaint procedure; equivalent work experience; for an entity to retain a new designated manager; notifications required and the timeframe for notification; and the form and content of license applications, form and amount of surety bonds; reinstatement of expired licenses consistent with NMLS standards; the form, content, and filing requirements for mortgage call reports; penalty for failure to file the report; disclosure requirements for brokers; requirements for agreements; federal laws that are applicable to brokers; trust fund rules; costs of investigation or examination; the meaning</p>	<p>Because the SAFE act requires all states to use NMLS&R, rulemaking authority is necessary to go from current licensing forms and procedures to those required by NMLS&R. In several areas, the requirements of the SAFE act will be fleshed out by administrative rule.</p>

	of terms in the criminal penalty section; requirements to maintain books in this state or reimburse the commissioner for costs of travel to where the books are located.	
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15. Submission of Application under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
All initial and renewal license applications are submitted online through the Banking Division's electronic application process, 32-9-115 and 116, MCA.	All applications must be submitted through the National Mortgage Licensing System (NMLS), New Section 17.	Federal law set forth within the SAFE Act requires that all applications be submitted through the National Mortgage Licensing System (NMLS).

16. Surety Bond under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Each mortgage broker entity and sole proprietor must maintain a \$25,000 surety bond or irrevocable letter of credit for each office or branch location that it used to conduct its business, 32-9-123, MCA.	SB 122 requires that each mortgage loan originator be covered by a surety bond. The mortgage loan originator's employing mortgage broker's bond may be used in lieu of the mortgage loan originator's bond, New Section 15. The amount of the bond will be set by rule and based upon dollar amount of loans originated.	The present law and SB 122 both require a surety bond. The SAFE act requires the amount of the bond be tied to the dollar amount of loans originated. That may be more equitable than present law given the slowdown in the mortgage market.

17. Testing under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
A test is required for all individual applicants, 32-9-110, MCA. The test providers are approved by the banking Division.	Twenty hours of pre-licensing education and a test is required for all individual licensees and applicants, New Section 16. The test provider is	Under present law a test is required with the initial license application. A grandfathering provision for the testing requirement was repealed in 2007. Federal

	approved by the NMLS.	law set forth within the SAFE Act mandates this requirement. It will apply both new license applicants and existing licensees.
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18. Trust Account under Mortgage Broker Act and SB122

Present Law	SB 122	Comment
Present law requires the use of a trust account for the receipt of bona fide third party fees, 32-9-125, MCA.	SB 122 requires the use of a trust account for funds received from the borrower, New Section 30.	The requirements of SB 122 are similar to what exists under present law.